Supreme Court, U.S.
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No. 06-312

IN THE
Supreme Court of the United States

PAUL L. NALLY,
Petitioner, Pro Se

v.

MEMBERS OF THE BARTOW COUNTY GRAND JURY, APRIL 2005 TERM
AND
MEMBERS OF THE BARTOW COUNTY GRAND JURY, AUGUST 2005 TERM
Respondents

Petition for Writ of Certiorari
to the Supreme Court of the State of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does Petitioner have a constitutionally protected right to prosecute his own cause in any court of the State of Georgia, and be heard by a properly clothed grand jury of competent jurisdiction therein pursuant to the U.S. Const., amend. X?

II. Does the decision of the Georgia Supreme Court constitute a procedural due process violation effectively denying Petitioner his fundamental rights to responsible use of speech and hearing in violation of, and materially inconsistent with, the U. S. Const., amend. XIV and does this conduct create an abdication of that Court's first constitutional duty to exercise jurisdiction granted in refusing to construe a constitutional provision sufficient to warrant a grant of affirmative relief to Petitioner by this Court's deciding the State constitutional right in I above?

III. Should this Court reconsider its holding in Linda R.S. v. Richard D., 410 U.S. 614 at 619 (93 S. Ct. 1146, 35 L. Ed. 2d 536) (1973) relative to the judicially cognizable interest of a citizen in the prosecution or non-prosecution of another as being an overbroad statement of constitutional law in light of Georgia's Constitutional provision and Petitioner's claim of right hereunder?

PARTIES TO THE PROCEEDING

The following list identifies all of the parties appearing here and before the Supreme Court of the State of Georgia.

The Petitioner herein is Paul L. Nal[illegible], Pro Se.

The Respondents herein are individually the members of the BARTOW COUNTY GRAND JURY, APRIL 2005 TERM: FOREMAN, Dennis Charles Hurley, MEMBERS, Jenny Marie Allen, Donna E. Bazelmans, David E. Bell, Jo A. Branton, Edward D. Brush, Stan C. Carroll, Kimberly Burns Chester, Charles Evans Croft, William L. Dodson Jr., Thomas Carlton Etheridge, Michael Todd Fields, Julie Ann Goff, Jody L. Grizzle, Rachel Bethany Holeman, Barbara A Jarrett, Erica D. Knowles, M. Elizabeth Nelson, Sandra W. Southern, Sheila R. Stockhausen, Jeffery Michael Tumlin, William Claude Wilson Jr., Ginger Lee Yrabedra, and individually the members of the BARTOW COUNTY GRAND JURY, AUGUST 2005 TERM: FOREMAN, Larry G. Holt, MEMBERS, Beverly J. Baribault, Karl E. Baumeckel, Thomas Leon Carnes Jr., Larry w. Crane, Barbara G. Gord, Vyola H. Foster, Amanda Lea Garland, Benjamin D. Hamrick, Jeffrey Douglas Jarros, Camy M. Heilman, Robert Patrick Hill, Michael Stiles Howren, Feliciana O. Kim, Dennis W. Knowles, Joseph William Nelson, Patrick James Nelson, Judy R. Smith, Danny M. Stone, Russell J. Tumlin, Tomas Vazquez, Linda A. Vernon, Jimmy R. Wilson Jr.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgments rendered in the Superior Court of Bartow County Case Number 01-CV-2227 and the decision of the Supreme Court of Georgia thereon in the combined cases S06A0487 and S06A0568 reported at 2006 Ga. LEXIS 351.

OPINIONS BELOW

Petitioner's Motion For Reconsideration (Pet. App. B, p. 2a) to the Georgia Supreme Court was denied on July 14, 2006 and a copy of the denial is found at Pet. App. A, p. 1a. The Judgment of the Georgia Supreme Court is found in Pet. App. C, p. 7a. The judgments of the Superior Court of Bartow County, Georgia are attached in Pet. App. E, p. 30a, Pet. App. F, p. 33a and Pet. App. H, p. 38a. The decision of the United States District Court, Northern District of Georgia is found in Pet. App. G, p. 35.

JURISDICTION

The Supreme Court of Georgia entered its judgment on May 17, 2006 and denied Petitioner's motion for reconsideration on July 14, 2006. Petitioner seeks appeal. This Court has jurisdiction under 28 U.S.C. § 1257 and U.S. Const., amend(s). I, X, and XIV.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves co-existent Constitutional provisions of the State of Georgia and the United States, i.e. U.S. Const., amend. I which is co-existent with Ga. Const., Art. I, sec. I, par V and par. IX, US Const. amend., XIV which is co-existent with Ga. Const., Article I, section I, par(s). I and II, and one provision of the Ga. Const., Art. I, Sec. I, par. XII, which is protected by the U.S. Const., amend. X, i.e. the right

to prosecute one's own cause in any Court of the State. The pertinent provisions of the U.S. Constitution are reproduced in the Appendices at Pet. App. I, and the pertinent provisions of the Georgia Constitution are reproduced at Pet. App. J.

I.
STATEMENT OF THE CASE

After a period of time being denied access to the Grand Juries of Bartow County, Georgia by the District Attorney, the judges of the Superior Court, and the grand juries themselves, wherein Petitioner sought a hearing to present his evidence supporting allegations of ongoing incidences of official corruption and organized criminal activity, Petitioner brought suit seeking vindication of his Constitutional and civil rights relative thereto. The Superior Court of Bartow County, Georgia, Judge Arthur Fudger presiding in Case Number 01-CV-2777, after hearing, entered Order filed May 29, 2002 (Pet. App. G) in which Judge Fudger held as non-existent the right articulated in Ga. Const., Art. I, sec. I, par. XII of a citizen to prosecute his own cause in any court of the State, ruling that (citing Ga. Const., Article VI, sec VIII, paragraph I(a).),

> "In his complaint, Plaintiff alleges a constitutional right to be a "citizen prosecutor" and prosecute criminal actions in his own behalf. However, a citizen has no such right. Criminal actions are the right of the state, not an individual, and are brought in the name of the state by the district attorney." (Pet. App. H, p-38a)

Petitioner subsequently petitioned two additional Grand Juries under threat of arrest if Petitioner did petition the Grand Jurors, but his petitions were ignored by the two Grand Juries. Petitioner sued both grand juries in the Superior Court and both judges refused to permit the suits to go forward relying, inter alia, on the void judgment of Arthur Fudger as being an absolute bar to Petitioner's access to the Courts and, subsequently, the Grand Jury for the purpose of

responsibly exercising his rights. (Pet. App. E, p. 29a-30a & Pet. App. F, p. 32a-34a)

Petitioner appealed to the Supreme Court of Georgia (Pet. App. D) attacking Judge Fudger's Order as void on its face for deprivation of protectable guarantees. Petitioner also sought reversal of the two subsequent orders for having been based upon said void order, sought vindication of his rights relevant to presenting his allegations and evidence to a grand jury, and when a grand jury refused to hear, his right to seek their liability for their refusal to comply with their official oath of office.

The Georgia Supreme Court held (Pet. App. C) that Petitioner did not show the judgment of Arthur Fudger to be void on its face as lacking only in personam or subject-matter jurisdiction and, holding, without deciding, that if it were merely erroneous, it should have been procedurally attacked by motion to set aside or appealed, therefore, since Petitioner did neither, Petitioner could not now challenge the legal merits of that Order.

II.
ARGUMENT

The decision of the Georgia Supreme Court effectively grants "legal significance" to a void lower court order which on its face (Pet. App. G, p-36a) deprives Petitioner of his Constitutional Rights contained in Ga. Const., Art I, sec. I, par. XII (Pet. App. J, p-42a) and deprives the citizens of this State of their right to the evidence of any man.[1] (Pet. App. D, p-24a [fn 12]).

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[1] Rogers v. State of Alabama, 192 U.S. 226, 230 (1904) "It is a necessary and well settled rule that the exercise of jurisdiction by this court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights."

Williams v. Georgia, 349 U.S. 375, 383, (1955) "But, where a State allows questions of this sort to be raised at a late stage and be determined by its courts as a matter of discretion, we are not concluded from assuming jurisdiction and deciding whether the state court action in the

There are three critically important issues that Petitioner believes must be clear in the minds of the Honorable Justices of this Court, one is the prosecutorial standing of a citizen in the State of Georgia relative to its plain language acknowledgement in the State's Constitution as this issue was raised in the Georgia Supreme Court (Pet. App. D, p-15a-16a) along with its Federally protected status under U. S. Const., amend. X (Pet. App. I, p-40a), secondly, the liability of a grand jury for its refusal to hear a criminal complaint brought to their knowledge touching upon their current service (Pet. App. D, p-27a-28a), and third, the gross abuse of discretion by the Georgia Supreme Court's procedure used in this case.

A.
PROSECUTORIAL STANDING IN GEORGIA

In addressing prosecutorial standing in Georgia pursuant to Ga. Const., Art. I, sec. I, par. XII, Petitioner respectfully calls the attention of this Honorable Supreme Court to In Re Lester, 77 Ga. 143, 148 (1886) in which Justice Hall wrote in dictum,

> "It is the right of any citizen or any individual of lawful age to come forward and prosecute for offenses against the state, or when he does not wish to become the prosecutor, he may give information of the fact to the grand jury, or any member of the body, and in either case, it will become their duty to investigate the matter thus communicated to them,..."

A review of this specific comment reveals that this pointed dictum may apply only to Ga. Const., Art, I, Sec. I, Par. IV (1877) (Pet. App. J, p-41a), and that the recognition

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particular circumstances is, in effect, an avoidance of the federal right. A state court may not, in the exercise of its discretion, decline to entertain a constitutional claim while passing upon kindred issues raised in the same manner."

of this duty dates back to the common law in use before the first Ga. Const., Art. LVIII (February 5, 1777) (Pet. App., id.) remaining so to this date.

This Article of the Georgia Constitution of 1777, a codification of a long recognized common law duty, predates the U.S. Const., amend. X by some 14 years and is protected by it. This Honorable Court is obliged to take notice of this right of the citizens of the State of Georgia as a right reserved unto them, and this Court's duty to declare and protect said right in compliance with U.S. Const., amend. X.

Within the limits of Petitioner's ability to research, In re Lester has been cited by the Georgia Supreme Court on six separate occasions, but not once since Justice Hall has the Georgia Supreme Court addressed the concept of the prosecutorial standing of a citizen outside the context of compelling official discretion; nor the concept that when a citizen, out of necessity, occasioned, in some cases, by the malfeasant or dilatory conduct of a judge or district attorney, prosecutes for offenses against the State, he stands, by necessity and simultaneously, in his own place and as the State's representative, entitled to all prosecutorial immunities, privileges, and liabilities of that class; bringing not only to himself, but also the State, protections of free speech, petition and hearing, procedural due process, and equal protection.

In considering the language and legislative history of Par. XII, we find that it is, and was intended to be, all-inclusive as to the posture and forum of the citizen's choice, either prosecutorial or defensive; and as to the forum in which said posture might be taken, either criminal or civil, by the use of the all-inclusive noun "cause". This prerogative was acknowledged by the Supreme Court of Georgia in Bloomfield vs. Liggett & Myers, Inc. et al., 230 Ga. 484-485:

"Small's A Stenographic Report of the Proceedings of the Constitutional Convention Held in Atlanta,

Georgia, 1877 (Constitution Publishing Company, Atlanta, 1877) reflects the adoption of the language in 1877 as the proposal of Mr. Tift, who explained it as follows (p. 94) 'Mr. Tift. I see no provision of that kind in the printed bill before us. It is very important that every person shall be permitted to prosecute or defend his own case in any of the courts of this state. . . . Yet, I think, in every case, the person should have the right to appear himself, and by attorney also, I call for the division.' Upon the division the vote was - [ayes] 101; noes 29. So the amendment was received."

The right of self-representation in Georgia, not just in the courts but all agencies of government, is constitutionally immutable regardless of the forum or the posture taken. Nowhere in the State's Constitution or statutes does Petitioner find language making any governmental agent the sole and exclusive prosecutor of criminal activity. Rather, of the many statutory methods of reporting crime and seeking the prosecution of criminal activity, the procedure to be followed is a matter of the sound discretion of the citizen.

Following the reasoning of O.C.G.A. 1-2-6 , which states,

" (b) All citizens are entitled to exercise all their rights as citizens, unless specially prohibited by law.",

it necessarily follows that there should exist some provisional or statutory exception, stated with such specificity as to put a person of common intelligence on notice that this prosecutorial posture is not afforded to a citizen. There being none, it is improper for any jurist to hold contrary to the broad all-inclusive, plain-intent language of the provision; as to do so is a transgression of the legislative authority and the sovereignty of the citizens of this State, and, engaging in such, voids any otherwise well-intentioned efforts.

The current denial of the par. XII provision by the Georgia Supreme Court, the Fudger Court, and the holding adopted in Ambles, supra, at 407, in which Justice Clarke wrote:

> "... it is the state, not the victim, that has an interest in criminal prosecutions. See Linda R.S. v. Richard D., 410 U.S. 614 (93 S. Ct. 1146, 35 L. Ed. 2d 536) (1973) ("a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another")."

is in the nature of judicial legislation and flies in the face of both the U.S. Const., Art. IV and amend(s). I, X, and XIV, and the broad provision in Ga. Const., Art. I, sec. I, Par. XII by having the effect of denying a citizen's right, not just to standing, but speech and hearing as well, where neither language, legislative intent, nor legislative history intended such to be. In the underlying instant matter it is being used to prevent bringing evidence of criminal activity to the attention of those clothed with the power of government to redress the matter, the state and federal grand juries in Georgia.

It must not go unnoticed by this Supreme Court, as the lower State and Federal Courts have done, that the Supreme Courts of two other states[2] have specifically looked to Georgia and have held that, in this State, a citizen has the right to go uninvited before a grand jury, a holding yet to be pointedly addressed by the Georgia Supreme Court in spite of the question being squarely put in front of them in the underlying case. These holdings have not been given the full faith and credit of precedent case law commanded by U.S. Const., Article IV.

Since Appellees raised in their pleadings to the Georgia Supreme Court the decision of the U.S. District Court (Northern District of Georgia, Atlanta Division) case number

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[2] See: Illinois, vs. Parker, 374 Ill. 524 at 528, 30 N.E.2d 11 (1940) and Brack v Wells, States Attorney, 184 Md. 86 at 95-96 (1944)

1:02-CV-2829-JOF, (Pet. App. G, p. 35a-37a) in which the Honorable J. Owen Forrester issued an Order, void on its face as materially inconsistent with due process as a deprivation of the right of a Georgia citizen to make known to a federal grand jury his allegations of violations of federal criminal laws, by relying on Linda R. S. v. Richard D., 410 U.S. 614, 619 (1973) on page 3 of his Order filed April 17, 2003 (Pet. App. G, p. 36a), it is necessary here to point out that the holding in Linda R. S. was reached upon a review of the Constitution and statutes of Texas which did not contain any pointed language acknowledging a citizen's right to prosecute for any crime whether victim or not, and nether do the three states constitutions from which prior cases were cited therein.

Clearly this holding, if its scope is allowed to be broadened beyond the limit of the issue of compelling official discretion, is contrary to the plain language provisions of the U.S. and Georgia Constitutions, and the adoption of such a broad language in both Linda R. S. and Ambles, supra., was error, not because it did not apply to the very narrow issue that it addressed, which was citizen interference with official discretion, rather the syntax was overly broad and erroneous as a general statement of constitutional law in both Georgia and the Federal jurisdictions in Georgia as infringing upon Constitutional due process guarantees, and plainly at variance with the Georgia Constitutional provision contained in Art., I, sec. I, par. XII which is protected by U.S. Const., amend. X. It does not properly represent the larger compelling public policy and citizen's interest in having a civilized and legitimate tool to use in the dissuasion of governmental oppression and corruption[3] and a power which the people of Georgia have reserved to themselves.

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[3] Wood v. Georgia, 370 U.S. 375, 390, "Particularly in matters of local political corruption and investigations is it important that freedom of communication be kept open and that the real issues not become obscured to the grand jury. It cannot effectively operate in a vacuum. It has been said that the 'ancestors of our `grand jurors' are from the first neither exactly accusers, nor exactly witnesses; they are to give voice to common repute.' "

Until this time in this State there has been no question that an offense against the state is literally an offense against all individual citizens, and when the state cannot, or will not, prosecute for an offense, the citizen is left, in his sole and well reasoned discretion, to take up the gauntlet and join the battle as an officially recognized prosecutor with the right to bring his evidence before the Grand Jury thereby initiating a criminal inquest. In this are "the rule of law" and the "sovereignty of citizens" in a civilized society brought into fruition and may enjoy their finest hour.

In Blair v. United States, 250 U.S. 273, 279-280 this Honorable Court stated, and herein lies, the ancient authority for a citizen's prosecutorial standing in Georgia,

> "[B]ut as early as 1612, in the Countess of Shrewsbury's case, Lord Bacon is reported to have declared that 'all subjects, without distinction of degrees, owe to the King tribute and service, not only of their deed and hand, but of their knowledge and discovery.' 2 How. St. Tr. 769, 778. And by Act of 7 & 8 Wm. III, c. 3, § 7 (1695)"

In this Republic, that tribute, service, and knowledge has been codified in all Georgia Constitutions, and is not for a king, rather for the mutual protection from official abuse for the true sovereigns of this State, its citizens, who have an absolute right to the evidence of every man; and as to grand juries in Georgia, a legal non-discretionary self-enforcing legal duty to hear that evidence.

Although Georgia's Art. I, sec. I, par. XII is unique among the 50 States, broad, and all inclusive; and on its face, and in its legislative history, admits of no limitation as to forum or prosecutorial standing of a citizen to proceed to complaint, trial, and appeal in the place of the State, Petitioner does not mean, nor has he ever intend, that such a broad reading should be had. Just as one may not cry "fire"

in a crowded theater, so too, an inexperienced citizen, unskilled in practice and procedure, could not and should not, at this juncture of procedural evolution, be either expected or permitted, on behalf of his fellow citizens, to prosecute a criminal matter at the trial and appeal level. The reasonable expectation of the citizens to the most skillful representation of their interest in criminal prosecutions outweighs such a procedural allowance with the possible exception of an attorney skilled in criminal practice. But, up to and including the appearance before a Grand Jury, in his own place or with assistance of counsel, such unrestraint must be preserved, especially since the Federal and State guarantees of free speech, petition, and hearing are so inextricably linked to the provision, as are the well being and protection of the rights citizens. After all, it is within the discretion of the Grand Jury as to who should represent the State's interest, and the duty of the State's Legislature to provide by statute therefor, not judges illegally acting as legislators.

B.
GRAND JURY LIABILITY

The Grand Jury is an investigative and accusatory body, and in Georgia, the only constitutional entity clothed with the power to judge the law, not just the law as given by a judge to a criminal trial jury. In this context they share elements of the executive, legislative, and judicial branches of our government and are said to be the "Forth Branch" established by the people of this State for their protection from official as well as criminal abuse.

Their powers and duties are a matter of law in both Constitutions and in the statutes of this State. But not all their liabilities are spelled out in the statutes, and in too many cases; they are kept ignorant of some of these by courthouse officers.

Powerful though this body may be, in the words of Justice Powell in the case of U.S. v. Calandra, 414 U.S. 338

at 436 (1974), the grand jury "... may not itself violate a valid privilege, whether established by the Constitution, statutes, or the common law. Branzburg v. Hayes, supra; United States v. Bryan, supra; Blackmer v. United States, supra; 8 J. Wigmore, Evidence 2290-2391 (McNaughton rev. ed. 1961)." Yet, these Georgia Judges would rather rely upon Georgia holdings that do not comport with this precedent. (Pet. App. F, p. 30a) Any court holding or statute that grants blanket immunity to a grand jury for acts that may only be seen as willful, intentional, or misguided acts that clearly violate protectable guarantees is itself unconstitutional and void.

Just as all other government entities clothed by our Constitution, Grand Jurors have the paramount duty defined in Ga. Const., Art. I, Sec. I, Par. II to protect the person and the property of all citizens, and swear an ancient statutory oath that they shall diligently inquire and true presentment make of all matters touching upon their present service, and further, that they will not withhold presentment based upon fear, favor or affection, O.C.G.A. 15-12-67.

A review of the record of the cases below can leave no doubt in the mind of a reasonable and prudent person as to the denial by the majority of those grand jury members of due process and equal protection, to which they must adhere, and the violation of their oath as to inquiry and presentment, nor the statutory prohibition of relying solely upon their own knowledge (O.C.G.A. 9-10-6) whether occasioned by ignorance, indifference to ignorance, or the embracery of others.

This conduct raises the question of how they may return a "true" presentment and fulfill their constitutionally mandated role to protect the person and property of all citizens, prosecutor and accused alike, if they refuse to hear testimony, see the evidence, and be impartial, providing all due process and equal protection, until such time as the evidence reaches the level of a presumption of probable cause or a lack

thereof. The requirements of free speech and due process hearing, and the grand jury's positioning between an oppressive entity and an accused, mandates them to impartially see and hear.

Their proper function may only be accomplished when they, or the judges having supervisory duties thereto, insure that there exists no forbidden affinity in their ranks and, more importantly, that they are fully informed of their duties and liabilities, and are upright in their conduct. The concept of knowledge coupled with uprightness forms the nexus of impartiality and precludes the encroachment of a socially or politically biased or otherwise prejudiced heart as to any individual or cause coming before or being brought to them.

Under stare decisis found in James B. Beam Distilling Co. v. State Of Georgia et. al. (two cases), 263 Ga. 609, 612(1993) the Georgia Supreme Court adopted this Honorable Court's holding by stating,

> "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' [Cits]. Mathews v. Eldridge, 424 U.S. 319, 333 (96 S. Ct. 893, 47 L. Ed. 2d 18) (1976)."

How soon the Georgia Supreme Court forgets.

Regardless of the true reasons, whether corruptly influenced, ignorance, or indifference to ignorance, one fact is inescapable, virtually all, and in any event a majority, of these grand jurors violated their oath of office, and in each case violated the prohibition against a denial of due process hearing under both Constitutions. These grand juries refusal to see and hear constitutes, at least, an intolerable abusive constitutional tort and, at worst, treason against their Constitutions and society, since this conduct has the effect of concealing evidence of criminal conduct thereby giving "aid and comfort" to the enemies of their society. This abuse is

also laid at the feet of Judges and District Attorneys who choose to keep jury members from being fully and properly informed of the extent of their power, duty, and liability.

C.
JUDICIAL DENIAL OF DUE PROCESS

The absolute first jurisdictional duty of the Georgia Supreme Court, as defined in its Constitution, is found in the Ga. Const., Art. VI, sec. VI, par. II and specifically provides that the Georgia Supreme Court,

> "... shall exercise exclusive appellate jurisdiction in ..: (l) All cases involving the construction ... of the Constitution of the State of Georgia or of the United States ..."

This language, the First defining that Court's jurisdictional duty, makes mandatory its construction of constitutional provisions when brought to them. (Pet. App. D, p. 15a-16a) In compliance with the paramount duty of government in Ga. Const., Art I, sec. I, par. II and upon a determination of its jurisdiction, the Georgia Supreme Court is obliged first to procedurally address, clearly and explicitly, the constitutional question properly placed before it, and from that construction proceed to the rest of the issues raised. This it refused to do.

Rather than meet head on the constitutional construction issue raised in Petitioner's pleadings (Pet. App. D, p. 15a-16a) by addressing the reason for the void nature claim of Case Number 01-CV-2777, those judges sought to take a deceptive advocacy stance that has the result of leaving in place a judgment void on its face for denial of citizens' rights, which is an act materially "inconsistent with procedural due process" of both Constitutions, and requiring a citizen to be continually burdened by an obnoxious and intolerable deprivation of his rights at he hands of his State's

highest Court. It may also be understood to have a chilling effect, as precedent case law, upon the desire of others to step forward and bring their evidence to their fellow citizens in grand jury convened.

This type of deceptive advocacy by the highest court of a state is nothing more than a example of what Frederic Bastiat meant when he observed that the greatest evil occurred when the law is subverted and turned to an instrument of plunder. Deceptive advocacy of this type in this case is a gross and intolerable abuse of judicial office wherein procedural discretion is not allowed and is a blatant denial of due process, which has the effect of being a subterfuge for denial of a citizen's right to be heard and all citizens' right to his evidence.

The Georgia Supreme Court, just as the lower courts, has ignored its own stare decisis third test of void judgments established in Johnson v. Mayor & City Council Of The City Of Carrollton, et al, 249 Ga. 173, 175; 288 SE 2d 565 (1982)[4] the acting in a manner materially inconsistent with due process. Obviously, it is not the intent of the Georgia Supreme Court to do substantial justice. Rather than first squarely addressing the construction of the constitutional provisions, both State and Federal, properly raised before it, upon which all else below would rise or fall, to which Petitioner had a right to have and which that Court had an affirmative, non-discretionary, self-enforcing legal duty to do, held that Petitioner did not show the judgment of Arthur Fudger to be void on its face as lacking only in personam or subject-matter jurisdiction and, holding, without deciding, that if it were merely erroneous, it should have been procedurally attacked by motion to set aside or appealed, therefore, since Petitioner did neither, Petitioner could not now challenge the legal merits of that Order. (Pet. App. C, p.

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[4] Johnson v. Mayor & City Council Of The City Of Carrollton, et al., 249 Ga. 173, 175; 288 SE 2d 565 (1982), "Consistent with federal authority, we now hold that a judgment is void if the court which rendered it acted in a manner materially inconsistent with due process."

8a) The Georgia Supreme Court ignored the critical and underlying Georgia Constitutionally non-discretionary mandated duty to first construe the provision and ignored the attendant federally protected status of the Par. XII provision raised by Petitioner (Pet. App. D, p. 15a) and (Pet. App. B, p. 5a - 6a) all of which are at the very heart of Petitioner's underlying prosecution. This conduct goes to the heart of the issue of a Court denying its jurisdiction, thereby committing the treasonable act of declining to exercise its jurisdiction as observed in the holding of Mr. Chief Justice Marshall in Cohens v. Virginia, 19 U.S. 264, 404 wherein he stated,

> "With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution."

Intentional material non-compliance with the rules of procedure, constituting that treason, creates a judgment void for material non-compliance with the Fourteenth Amendment's due process mandate and becomes a judgment void on its face, a judgment which provides "aid and comfort" to criminal elements of this State.

III.
REASONS FOR GRANTING THE PETITION

This case presents an exceptionally important question of federal authority to determine for itself whether a state's highest court has avoided federally protected guarantees, avoided that court's own mandated duty in violation of the U.S. Const., amend. X and amend. XIV, and that said decision is in the nature of, and has the effect of, an official judicial denial of protectable guarantees by refusing to exercise its jurisdiction. It also raises the authority of this Honorable Supreme Court's duty to enforce U.S. Const.,

amend. X protected rights existent in a State's Constitution against lower courts' abuse, and to declare those acts void.

Petitioner has a right to a pointed interpretation and explication of the provisions of his state's constitutional provisions, especially when such construction is absolutely material to his proceedings; and when a state's highest court refuses to construe, interpret, or otherwise explicate a provision of its own constitution, especially one protected by amend. X, it becomes the duty of this U.S. Supreme Court not only to protect that provision, but to explicate it as well in the face of that State's judicial abdication of its legal non-discretionary duty.

IV.
IMMEDIATE REVIEW IS URGENTLY NEEDED

This Court's review is urgently needed. Petitioner has raised allegations of critical public concern yet has been denied the opportunity, in the forum of his choosing, the only forum constitutionally clothed with the necessary power, to have his claims heard, and, more importantly, his evidence seen, the full extent of which no judge, here or below knows; though some, with fear and trepidation, may suspect.

Of no small concern is that one witness germane to the underlying prosecution has already died, and further delay only increases the very real, not merely speculative, likelihood of further deterioration of other evidence, not to mention that further delay in correcting the misconduct of these lower courts will have an irreparable chilling effect upon the willingness of other witnesses to come forward.

V.
CONCLUSION

The petition for a writ of certiorari should be granted and this Honorable Court should bring the full weight of its

authority to bear, through any appropriate writ which could be issued in its sound discretion, upon the judicial misconduct of these lower courts which Petitioner believes is undeniably warranted not only as these decisions constitute violations of the U.S. Const.,, amend(s) I, X, and XIV and this Court's case law precedents as raised by Petitioner in his pleadings below, but also because they have the force and effect of stripping a citizen of his right to civilly and lawfully participate, within his sound discretion, in the management of his government, have denied Petitioner his procedural due process, and denied the citizens of his County of their right to his evidence.. This Court must hold these judgments for what they are, absolutely void. See the dissent of the Honorable Justice Black, In re Winship, 397 U. S. 358, 385 (1970), "But that argument ignores the effect of such decisions on perhaps the most fundamental individual liberty of our people-the right of each man to participate in the self-government of his society."

Petitioner also requests the Honorable U.S. Supreme Court to construe and explicate Ga. Const., Art. I, sec. I, par. XII as an adjunct authority to its U.S. Const., amend X power due to the Georgia Supreme Court's abdication of that duty as petitioned (Pet. App. B, p. 4a – 6a.

Respectfully submitted this 26th of August, 2006

Paul L. Nally

PAUL L. NALLY
Petitioner, Pro Se

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Petitioner's Appendix A

SUPREME COURT OF GEORGIA

Case No. S06A0487 Atlanta, July 14, 2006

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

PAUL L. NALLY v. BARTOW COUNTY GRAND JURORS et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Benham and Melton, JJ., not participating.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk

Petitioner's Appendix B

IN THE SUPREME COURT
STATE OF GEORGIA

PAUL L. NALLY,
Appellant, Pro Se
vs.

Case No S06A0487 and
S06A0568

BARTOW COUNTY GRAND
JURORS, et al.,
Appellees.

MOTION TO RECONSIDER AND PETITION FOR INJUNCTIVE RELIEF WITH MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW Appellant and seeks this Court's reconsideration of its decision in these cases[1] and request a decision compliant with its paramount duty.

Further, Appellant request that this Court properly address the underlying questions presented by this case and explicate the legal relationship of these issues to the citizens of this State.

Appellant's reading of this decision indicates that this Court has now determined that there are two conditions precedent concerning judgments void on their face. 1) An appeal must be taken and 2) the appeal must be within some statutory time, otherwise, the appellant will be bound by such void judgment.

Appellant reminds this Court that it has no Article VI authority to rewrite the language of any statute which the

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[1] O.C.G.A. 16-1-3(13). (13) 'Property' means anything of value, including but not limited to ..., contract rights, ..."

Ga. Const., Art. I, sec. I, par. II. Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

Legislature has not seen fit to modify. Nor does this Court have authority to ignore the plain mandate of state law.[2] Additionally, this Court does have a duty to recognize fatal errors in the proceedings of lower courts even if not raised below or on appeal to prevent a miscarriage of justice[3] and in its own proceedings, especially where such results are not constitutionally permissible.

In spite of these supposed conditions in this decision relative to fundamental rights, Appellant finds no such requirement in the statutes of this State, rather, a careful reading indicates that even though there are statutory times for direct appeals, there is no time limit on seeking the impeachment of any judgment claimed to be void[4]. Further,

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[2] O.C.G.A. 9-11-60. "(a) ... A judgment void on its face may be attacked in any court by any person. ...

(f) ... A judgment void because of lack of jurisdiction of the person or subject matter may be attacked at any time. ..."

O.C.G.A. 9-12-16. "The judgment of a court ... which is void for any other cause is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it."

Ga. Const., Art. I, sec. II, par. II. The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided.

[3] Georgia Ports Authority et al. v. Hutchinson, 209 Ga. App. 726, 730 (1993) "Although appellant did not raise this issue below or on appeal, the judgment of a court which is void for any cause is a mere nullity and may be so held in any court when it becomes material to the interest of the parties to consider it. OCGA 9-12-16; Parker v. Bond, 47 Ga. App. 318 (170 SE 331). See Troup County Bd. of Commrs. v. Public Fin. Corp., 109 Ga. App. 547 (136 SE2d 509); OCGA 9-11-60 (a)." Certiorari denied, S93C1810, November 4, 1993

[4] Adams et al. v. Payne et al., 219 Ga. 638, 640, (1964) "A judgment which is void for any cause is a mere nullity, and may be so held in any court when it becomes material to the interest of the parties to consider it. Code 110-709; Hart v. Manson, 119 Ga. 865 (47 SE 345). "A 'void' judgment is in reality no judgment at all. It is a mere nullity. It is attended by none of the consequences of a valid adjudication, nor is it entitled to the respect accorded to one. It can neither affect, impair, nor create rights. As to the person against whom it professes to be rendered, it binds him in no degree whatever, it has no effect as a lien upon his property, it does not raise an estoppel against him. As to the person in whose favor it professes to be, it places him in no better position than he occupied

when such claim is raise[d], it must be afforded at least a due process hearing rather than an arbitrary, capricious, and unilateral edict of a judge.

Appellant additionally reminds the Court that some of these are fundamental federally protected questions raised in these cases which this Court is granted jurisdiction to address. Based upon a reading of the current decision, neither these nor the rights of citizens enumerated in our Constitution have been properly addressed, let alone vindicated, i.e., the right to responsibly exercise speech, the right to petition and be heard at a meaningful time and in a meaningful manner, and the right of every citizen to the evidence of any man.

Even the most marginally equipped citizen may read the decision of this Court and understand that It has strained at gnats, yet swallowed a camel. Crucial questions were properly raised to this Court that bear directly upon the Constitutional rights, both State and Federal, of citizens of this State to defend their communities from criminal enterprises and this Court has refused to meet them head on. This decision, in effect, though without actually saying so, holds the judgment of Arthur Fudger valid on it face, and, in so doing, has the additional effect of eviscerating the right of a citizen to prosecute his own cause, thereby depriving one citizen of a critical and essential mechanism whereby all citizens may protect themselves, or be protected, from official corruption. Additionally, such holding attempts to unlawfully hold hostage the right of one citizen and force, through the subversion of law and the perception of a valid

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before; it gives him no new right, but an attempt to enforce it will place him in peril." 1 Black on Judgments 248, 170. When this court discovers from the record that a judgment brought here for review is void for any reason, it will of its own motion reverse it. Smith v. Ferrario, 105 Ga. 51, 54 (31 SE 38). For similar rulings, see Walker v. Banks, 65 Ga. 20; Worsham v. Murchison, 66 Ga. 715 (1); and Ivey v. State, 112 Ga. 175 (4) (37 SE 398)." Overruled on other grounds, see Bennett et al. v. Jones et al. 218 Ga. App. 714, 463 SE2d 158 (1995) Schlesinger v. Councilman, 420 U.S. 738 (1975) " ... the standard rule that void judgments, although final for purposes of direct review, may be impeached collaterally in suits otherwise within a court's subject-matter jurisdiction."

final judgment, his abdication and subjugation to a void judgment. If this Court truly believes that Fudger's judgment is valid on its face, then this Court has a duty to explicate its reasoning for the record so that either Appellant or other appellate courts may receive illumination rather than be seen as leaning upon an unstable crutch such as "failure to appeal" which is not required since judgments void are no judgments at all and do not exist, they simply may not be permitted legal existence or recognition[5] especially through the subterfuge of deceptive advocacy.

Appellant therefore prays that this Court specifically find as fact that the Judgment of Judge Arthur Fudger is either a factual statement of the Law in this State and therefore a valid judgment, or that it is not and therefore a Judgment void for deprivation of Constitutional rights; and that this Court state separately Its conclusions of law as to both State and Federal protected, and prosecution, guarantees drawn into question by said Judgment. Subsequently thereto that this Court render a decision in the nature of Injunction to all lower court judges forbidding them, in any manner, from preventing any citizen's right to petition and be heard by a grand jury when seeking to lay evidence before said jury[6]. Appellant's concern is not whether this Court has any power at all to review his applications, although there may now be some question as to the bias and prejudice of the Judges sitting hereon, but rather, the manner in which the Court has proceeded to exercise its power as reflecting upon an allegation of abuse of discretion leading to a state's highest court rendering a judgment void for deprivation of guarantees intended to be protected at all cost. See Burns v. Wilson, 346

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[5] Dominguez v. Enterprise Leasing Company, 197 Ga. App. 664 (1990) 1. Although appellant asserts the invalidity of the judgment for the first time on appeal, we shall consider it; if a judgment is void, it is a nullity and may be attacked in any court where it becomes material. OCGA 9-12-16; Adams v. Payne, 219 Ga. 638, 639-640 (135 SE2d 423); Barrett v. State, 183 Ga. App. 729 (360 SE2d 400).

[6] O.C.G.A. 9-6-24. "Where the question is one of public right and the object is to procure the enforcement of a public duty, no legal or special interest need be shown, but it shall be sufficient that a plaintiff is interested in having the laws executed and the duty in question enforced."

U.S. 137, 139, 73 S. Ct. 1045, 1047 (1953). When the rights of one are denied, all are placed in jeopardy.

Appellant reminds this Court that the Grand Jury, in the due diligence and true performance of its duties, is the sole arbiter of what evidence it will consider adequate as to the question of probable cause, not a district attorney or a judge. Further, Appellant reminds this Court that when a grand jury is notified of a criminal matter, irrespective of its origin, that such notice "touches upon their present service" and as constitutional officers, they have no discretion as to whether they will hear; it is their immutable Constitutional duty that they shall hear. See In Re: Lester, 77 Ga. 143, 148 (1886).

Respectfully submitted this 25th day of May, 2006.

s/_____

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Petitioner's Appendix C

In the Supreme Court of Georgia

Decided: May 17 2006

S06A0487, S06A0568. NALLY v. BARTOW COUNTY GRAND JURORS et al. (two cases)

CARLEY, Justice.

Paul Nally, acting pro se, brought three separate lawsuits seeking recognition of his right, as a private citizen, to appear before the Bartow County Grand Jury to urge a return of indictments. Initially, he filed a declaratory judgment action against the district attorney and others. On May 29, 2002, the trial court entered a final order which denied relief, imposed costs and attorney's fees pursuant to OCGA § 9-15-14, and "enjoined and restrained [Nally] from filing any future actions in Bartow Superior Court until such time as he complies with the sanction to pay said ... costs and attorney's fees." He did not file a notice of appeal from that order.

In June of 2005, Nally filed a multi-count petition, which included a mandamus claim, against the Bartow County Grand Jury. In that pleading, he again sought recognition for, and enforcement of, his right to appear before that body and urge the initiation of a criminal prosecution. After filing his complaint, Nally simply mailed a copy to the individual grand jurors, who moved to dismiss for insufficient service of process and lack of personal jurisdiction. The trial court granted their motion and, in addition, noted that Nally was asserting the same claim that had been rejected in May of 2002 and that he had not shown compliance with the condition precedent of paying the costs and attorney's fees incurred in his initial action. In Case Number S06A0568, Nally appeals from that dismissal order.

In September of 2005, while his second action was still pending, Nally filed yet another multi-count petition which named as defendants the individual members of the newly

empaneled grand jury. He again urged that he had a right to seek the return of an indictment, and he sought a writ of mandamus to compel the grand jurors to allow him to exercise that alleged right. In connection with this third action, Nally filed a motion to recuse. After finding the recusal motion to be legally insufficient, the trial court dismissed the case based on the principles of res judicata and estoppel by judgment. In Case Number S06A0487, Nally appeals from that order.

Because the two appeals are interrelated, they are hereby consolidated for disposition in this single opinion.

CASE NUMBER S06A0487

1. Nally urges that the dismissal of his original complaint in May of 2002 is void. However, a judgment is subject to collateral attack only when it is void on its face. OCGA § 9-11-60. That requires a showing that the judgment lacks "either personal or subject matter jurisdiction." Murphy v. Murphy, 263 Ga. 280, 282 (430 SE2d 749)(1993).

Nally has not shown such deficiency in the order of May 2002. Instead, he merely contends that the trial court's ruling that he did not have a constitutional right to appear before the grand jury is erroneous on its merits. Advancement of that argument required the timely filing of a notice of appeal or a direct attack. "'If the judgment is merely erroneous, it can be attacked, and the error corrected only by appeal or by a direct proceeding to set it aside '" Walden v. Smith, 203 Ga. 207, 209 (5) (45 SE2d 660) (1947), overruled on other grounds, McCorkle v. Judges of Superior Court of Chatham County, 260 Ga. 315, 317 (392 SE2d 707)(1990). Nally did not pursue his right of appeal or a motion to set aside and, thus, cannot now challenge the validity of the legal merits of the May 2002 order.

2. Nally enumerates as error the trial court's finding that he failed to state a viable basis for recusal. However, his handwritten motion contained in the record does not state any specific grounds, but merely indicates generally that "the

judges of this Court are disqualified ... [and] it would be appropriate for these judges to disqualify/recuse themselves now and request a substitute judge."

In his brief, Nally contends that the trial judge to whom the case was assigned was disqualified because another judge in the circuit was related to two of the grand jurors. Obviously, that is not a legally sufficient basis for seeking recusal, since it does not relate to the judge who was presiding over the proceeding.

3. "'It is axiomatic that the same issue cannot be relitigated ad infinitum. (Cit.)' [Cit.]" Johnson v. State, 272 Ga. App. 294, 296 (6) (612 SE2d 29)(2005). Because the order entered in May of 2002 was not appealed, it conclusively established that Nally did not have a viable claim of entitlement to appear before the grand jury. Therefore, he could not relitigate that issue in a subsequent action against the individual members of the grand jury. "[T]he judgment unappealed from became final and is now res judicata as to the same issues sought to be raised in the present case." Swinney v. Reeves, 224 Ga. 274, 276 (161 SE2d 273)(1968).

> "[W]here there is identity of parties and subject matter, res judicata bars relitigation of matters that were or could have been litigated in an earlier action." [Cit.] "Collateral estoppel, like res judicata, requires identity of parties or privity. However, unlike res judicata, collateral estoppel does not require identity of the claim but only precludes readjudication of an issue already adjudicated between the parties or their privies in a prior action." [Cit.]

Hardwick v. Williams, 272 Ga. App. 680, 682(2)(b) (613 SE2d 215) (2005). Therefore, the trial court correctly dismissed the complaint wherein Nally had raised the identical claim for the third time.

4. Nally contends that the trial court erred in dismissing his second complaint. However, he did not perfect service in accordance with OCGA § 9-11-4 (c).

If service is never perfected and is not waived, the court does not acquire jurisdiction over the defendant and the suit is void, "since the filing of a complaint without perfecting service does not constitute a pending suit." [Cits]

Thorburn Co. v. Allied Media of Ga., 237 Ga. App. 800,802 (1) (516 SE2d 833)(1999). Moreover, for the reasons discussed previously, the second action was subject to dismissal on res judicata grounds.

5. In his remaining contentions, Nally urges that the trial court erroneously failed to hold a hearing on the merits of his claim and to make findings of fact and conclusions of law. However, dismissal of the action rendered a hearing on the merits and compliance with OCGA § 9-11- 5 2 moot. See Walker v. Walker, 238 Ga. 273, 274 (1) (232 SE2d 554) (1977); Uniform Superior Court Rule 6.3.

6. Nally urges that the trial court erred in failing to recognize that a default existed when a timely answer to his complaint was not filed. Under OCGA § 9-11-55 (a), a default exists when an answer is not filed "'within 30 days after service of the summons and complaint.' [Cit.]". Olvey v. C&S Bank of Clay ton County, 146 Ga. App. 484 (246 SE2d 485)(1978). Here, the time for filing an answer never began to run because Nally did not perfect service on any of the grand jurors whom he named as a defendant in the case.

Judgments affirmed. All the Justices concur, except Benham and Melton. JJ., not participating.

Petitioner's Appendix D

IN THE SUPREME COURT
STATE OF GEORGIA

PAUL L. NALLY,
Appellant, Pro Se Case No S06A0487

vs.

BARTOW COUNTY GRAND
JUROR APRIL 2005 TERM,
Foreman DENNIS CHARLES
HURLEY, et al.,
Appellees.

BRIEF IN SUPPORT OF APPEAL FROM TWO FINAL ORDERS

JURISDICTION

Determining the construction of Constitutional provisions is within the Article VI Original and Exclusive jurisdiction of this Honorable Court.

These cases arise from the interpretation of Ga. Const., Art. VI, Sec. VIII, par. I(d) (1983)[7] in case number 01-CV-2777. Said interpretation held that this Constitutional provision made a District Attorney the sole and exclusive arbiter of criminal prosecutions. Yet this holding did not explicate, or comparatively analyze, the relevance of this provision with Ga. Const., Art. I, Sec. I, par. XII.

It now becomes the duty of this Court to resolve the question as to whether or not the Constitution of Georgia in

[7] In his Order, Judge Fudger quoted the language of VI, VIII, I(d) but cited it as VI, VIII, I(a). Appellant cites subparagraph (d) as consistent with the Judge's apparent intent.

fact makes each District Attorney the sole and exclusive arbiter of criminal prosecutions within his jurisdiction in this State, or is this power coexistent, inter alia, with the public policy and legislative history and intent plainly stated in Ga. Const., Art. I, Sec. I, par. XII which recognizes this power as shared by a citizen to prosecute for offenses against the State as was stated at page 148 of In Re: Lester, 77 GA. 143 at least to the grand jury stage.

Additionally, as these two cases arise from the ignoring of a citizen complaint of criminal conduct by local grand juries, this Court is asked to decide whether a grand jury or other properly clothed agency, petitioned to hear a claim of malfeasance or criminal conduct from a citizen, has the right to ignore such petition or remonstrance without liability in tort or to a declaratory judgment proceeding while they are still in term.

I

A.

BACKGROUND OF CASE No 01-CV-2777

This case was filed in Bartow County Superior Court, November 11, 2001, seeking declaratory judgment affirming the right of a citizen to prosecute his own cause in a proper judicial, quasi-judicial, or grand jury forum established for that purpose which became enmeshed in challenges to the jurisdiction of Judge Fudger, of which there has been no final proper procedural resolution. However, that question is now moot as Judge Fudger's final Order of May 27, 2002 is void for depriving a citizen of Constitutional guarantees and is unenforceable. (R 05-CV-2448, 40-42)

B

BACKGROUND OF CASE No 05-CV-1674

Appellant petitioned the April 2005 Grand Jury of Bartow County, by letter dated May 15, 2005, to hear his

criminal complaint. This petition was ignored and no official response was had from the grand jury.

Appellant brought suit through verified complaint (R-5-14) seeking Writ of Prohibition, Declaratory Judgment, Mandamus and Damages for the deprivation of his Constitutional right of free speech, his right to petition and be heard upon a matter touching upon the then present service of said Grand Jury members, his right to due process and equal protection, and his right to prosecute his own cause in any court of this State unencumbered by a violation of the oath of office sworn to by each member of that body. Appellant sent notice and a copy of his complaint by first class mail to each Respondent. With the exception of four members of that Grand Jury, three of whom have been dismissed from liability by having attempted to comply with their oath (R-16, 21, 26) and a fourth who probably will be dismissed, a majority of the members ignored the suit.

This led to the filing of a motion for default after the expiration of 30 days, and a timely motion for findings of facts and conclusions of law (R-57-59). The motion for findings and conclusions was ignored and a final Order was issued therein denying Appellant's initial Complaint for having failed to comply with an illegal conditions precedent, i.e., paying award in Case Number 01-CV-2777, to bring such an action. Another motion for findings and conclusion was filed within 20 days thereafter which was also ignored. (R- 66-68) Therefore, Appellant appeals.

C

BACKGROUND OF CASE No 05-CV-2448

Appellant next petitioned the August 2005 Grand Jury of Bartow County, composed of different citizens, by requesting the Honorable Judge Carey Nelson to notify the grand jury that Appellant had a criminal complaint to lay before them. This petition was ignored by having no official response from the grand jury.

Appellant again brought suit by verified complaint prior to the expiration of their term, Case No. 01-CV-2448, (R- 6-

15) alleging violations of civil rights and unlawful deprivation of property, seeking through a Bill of Peace the relief afforded by any and all appropriate extraordinary remedies, including Declaratory Judgment, available to correct the continuing deficiencies which included the deprivation of the right of free speech, the right to petition and be heard upon a matter touching upon the then present service of said Grand Jury members, the right to due process and equal protection, and the right to prosecute his own cause in any court of this State.

Appellant served notice with a copy of his complaint and two copies of waiver of notice upon each Respondent by mail. One member of the panel refused the correspondence, causing a return of mailing, whereupon Appellant filed an Ex Parte Motion to Serve the Grand Jury Foreman. (R- 16-17)

Appellant, desiring an expeditious resolution of this matter and knowing that the local judges had a legal non-discretionary self-enforcing duty to refrain form exercising judicial power in this case, especially due to the fact that Judge Nelson was related to at least two of the members thereof within the prohibited degree by consanguinity, delivered a courtesy copy of a Motion to Recuse for Judge Howell's and the other Judges' signature exactly worded as the one they issued in case 05-CV-1674. (R- 05-CV-1674, 49) Instead, Judge Howell Ordered Appellant barred from the Court thereby depriving Appellant of his right to seek a civilized redress of grievance. (R- 18-22) This Order is predicated upon the same void order in case number 01-CV-2777, and is additionally void for an illegal exercise of judicial power by Judge Howell.

On the 13th, Appellant filed his Notice of Appeal, and on the 17th, in the hope of expediting and resolving this matter at the local level, filed a verified complaint containing an Ex Parte Writ of Procedendo Ad Justicium seeking a Motion to Set Aside, a Writ of Prohibition alleging, inter alia, bias an prejudice, Demand for Jury Trial, and Declaratory Relief with accompanying brief. (R- 23-30) Judge Howell filed his Order of dismissal October 18, 2005. (R-31-32) Again, illegally exercising judicial power in the very teeth of the law.

II.
ENUMERATION OF ERRORS
A
CASE NUMBER 01-CV-2777

This case was the epitome of a void ab initio proceeding, lacking procedural correctness and compliance from the outset, and to this date no proper due process hearing or trial has been permitted to resolve this contention. However, all that was made naught by the first and second sentence of the second paragraph in which Judge Fudger attempted to absolutely rewrite the Georgia Constitution. Herein lies the crux of the current problem.[8] (R- 01-CV-2448, 40-42)

Judge Fudger, ignored precedent case law handed down by two separate States which addressed the specific question of whether a citizen of Georgia could go uninvited before a grand jury and there lay down his evidence, both of which held this prerogative to be the law in Georgia, and he ignored the clear mandate of Ga. Const., Art. I, sec. I, par. XII. Not only did these States cite the holding in the specific Georgia case of In Re: Lester, 77 Ga. 143 (1886), but quoted the specific language of Justice Hall on page 148, finding that the 1886 Supreme Court established the case law precedent proposition that said prerogative of a citizen in Georgia was the law in this State.[9] Since these two Courts held the Constitutionally recognized prerogative of a Georgia citizen to go before a grand jury at his own volition, and made such recognition a holding of their Courts, those decisions further enhance the precedent weight, meaning, and public policy through legislative intent, of Ga. Const. Art. I, sec. I, par. XII and gave heightened precedent weight to Justice Hall in In Re: Lester. Judge Fudger, however, refused to bow to the Superior Authority imposed upon him by his oath and the U.S. Const., Art. IV (Full Faith and Credit Clause) and Amend. X seeking, instead, to subvert the verbiage of Ga.

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[8] O.C.G.A. 9-12-16

[9] See Illinois v. Parker, 374 Ill. 524, 528; 30 N.E.2d 11; (1940) and Brack v Wells, States Attorney, 184 Md. 86, 95-96; 40 A.2d 319 (1944).

Const., Art. VI, Sec. VIII, par. I(a) (1983) into a meaning of exclusiveness without reconciling this position with the clear and unequivocal public policy codified and expressed by the legislative intent found in the language and legislative history of Ga. Const., Art. I, sec. I, par. XII.

Irrespective of any other claims of void ab initio or voidness for any other reason, once the second paragraph of Judge Fudger's Order was stamped filed in the Clerk's office, his Order, and all else that followed in that case, became void, a mere nullity without legal force or effect for violating constitutional rights.

As further presumptive proof of the acceptance of this position by the "prevailing parties" therein is the statement of this Appellant, in his place, of the failure to date of any party to that action having filed any Fi Fa or having sought any other action to collect what some would have this Court to believe was a valid judgment.

Though further argument, or enumeration of error, is not necessary for the proper vacating and remand of these two cases on appeal due to the void nature of Judge Fudger's Order, which would preclude this Court from having to reach the merits of any other errors raised, Appellant, nonetheless, cites the following errors to illuminate the scope of the underlying conduct of these judges.

B

1

CASE NUMBER 05-CV-1674

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In case number 05-CV-1674 Judge Cummings erred in ignoring Appellant's Motion for Findings of Fact and Conclusions of Law. (R- 57-59)

As the record clearly shows, there was a timely motion for findings and conclusions well before the rendition of judgment in accordance with O.C.G.A. 9-11-52(a) which was ignored, and the Order of September 26, 2005 contains no separately stated findings or conclusions relative thereto

and neither do they legally appear anywhere in the order. (R-62-65) Additionally, there was another motion for findings and conclusions filed within the 20 day limitation following the filing of the Order which has been ignored. (R- 66-68)

The issuance of an Order merely raises a presumption that a judge believes he had jurisdiction therein, however the presumption is rebuttable. From a Socratic procedural perspective it was error for Judge Cummings to ignore such a motion, the results of which could have led to a challenge of his authority. Such a refusal contravenes the procedural due process rights of parties.

Every person appearing before any court has not only the right but the duty to insure himself that both the court and the judge before whom he appears are properly clothed with jurisdiction. One of the methods by which this may be accomplished is the filing of a Motion for Finding of Fact and Conclusions of Law relative to that question.[10] Since this Supreme Court has settled the question of the absolute first duty of a judge as being the determination of his being clothed with the authority of the State to exercise judicial power in a case before him (hereafter jurisdiction), a judge's prompt response would not be either impracticable or contrary to judicial economy, and is mandatory. Simply ignoring such an issue, timely raised, gives rise to a reasonable presumption of impropriety. Since the proper and timely compliance with this duty is legislatively mandated, Judge Cummings was, at least, grievously abusive of his discretion, when in fact the law permits him none, in responding to a proper and timely motion of this nature.[11]

Since the question addresses the condition precedent to the exercise of jurisdiction by Judge Cummings which has a direct effect upon the substantive rights of parties, the final resolution of which governs the remainder of his proceedings, and he failed to comply with the plain

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[10] Whitlock v. Barrett, 158 Ga. App. 100, 103 (1981), "Jurisdiction of court to afford relief sought is a matter which should be decided preliminarily, at the outset; jurisdiction either exists or does not exist without regard to the merits of the case."

[11] O.C.G.A. 9-11-52, 15-6-21, and 15-6-10

legislative command in O.C.G.A. 15-6-21, which permits no discretion, " [T]o decide promptly, within 30 days ... all other motions of any nature.", he has failed to provide proper procedural due process and his proceedings are therefore void, or at least voidable, as a matter of due process procedural law.

2.

ADDITIONAL PROCEDURAL ERROR

In addition to failing to comply with the legislative requirements of O.C.G.A. 9-11-52 and 15-6-21, Judge Cummings completely disregarded the legislative commandment to judges that when a case is, by law, in default and a motion for default is laid before them, it is their legal, non-discretionary, self-enforcing duty to first conduct their court in accordance with the procedural requirements of O.C.G.A. 9-11-55. These requirements, and their governing weight, have been memorialized in almost too numerous case precedents to be counted and is now infinitely beyond the concept of "long and well settled" procedural law. (Actually, there are about 183 cases addressing various aspects of 9-11-55 reaching back to 1982, and in each, addressing proceedings subsequent to default, initial compliance with 9-11-55 procedure is mandatory. A judge proceeding contrary thereto is, therefore, without jurisdiction.)[12] Its requirements are not to be viewed as suggestion, but as requirements to which compliance must be held. Its use is the nexus of substantive and procedural due process in default cases.

It must not go unnoticed that the statutes under which courts are commanded to proceed do not require pleading by parties as it is also well settled that a judge has a duty to know the procedural law governing a case as an integral part of his determination of his continuing jurisdiction in a case.

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[12] Global Assocs. v. Pan Am. Communications, Inc., 163 Ga. App. 274 at 275, 293 S.E.2d 481 (1982), "... its failure to show a meritorious defense is alone fatal to appellants' cause . . . [Cits.] Moreover, this requirement is a condition precedent; in its absence, the trial judge had no discretion to open the default."

Simply taking off on a tangent is not permissible considering the statutory and professional requirements for attaining such a critically important office in this Republic, his oath of office, and the precedent weight placed upon the issue of judicial integrity in the minds of the public.

By proceeding pursuant to O.C.G.A. 9-11-4, Judge Cummings was without jurisdiction; his Order void as a matter of law.

3.

SCOPE OF ORDER BEYOND AUTHORITY OF LAW

Judge Cummings further erred in issuing an Order broader in scope than was permitted by his jurisdiction, assuming he was properly clothed.

Another precept of law, well settled, is that without jurisdiction a judge has no authority to reach the merits of a case.[13] Yet, Judge Cummings, ignoring a proper and timely query to his jurisdiction, and his ignoring procedural due process, took the time to delve into the merits of Appellee's pleadings of this case by referencing the prior void case, 01-CV-2777, which he illegally assumed to be a valid case contrary to the pleading of Appellant without providing a due process hearing or trial upon facts in controversy relative to the void nature of that case. (R- 44) It must be pointed out that there exists no agreement between the parties in writing which permit the Judge to be the trier of fact herein, and a review of the record clearly shows Appellant's request for jury trial on all issues of fact. (R- 12)

If we assume, arguendo, that Judge Cummings was clothed with jurisdiction and properly decided the issue of no jurisdiction over the Respondents for lack of notice and summons then pursuant to precedent authority his order should have stopped at the end of his second paragraph beyond which he had no authority of law to go. Without jurisdiction, there was not authority to reach the merits of the case..

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[13] Whitlock v. Barrett, Id.

There can be no argument that from the end of his second paragraph to the end of his Order it is void as lacking jurisdiction and demands to be vacated, along with the rest of the Order.

4

COURT ACCESS

Although there are occasions when a court may properly bar a petitioner from access to the courts, those times require the most stringent restraints upon judges making such a decision. The law of this State permits any party to raise the defense of void judgment any time it becomes material to his interest to do so.[14] To reach his conclusion of denial of access to the courts and grand juries, Judge Cummings ignored Appellant's demand for hearing or trial on issues of fact, and instead, relied upon the improper use of court rules, a lesser authority, instead of the superior statutory law, and set himself up as a "trier of fact" so that he could presume that a previous Order was valid and applied to the case at bar. A misapplication of law and a material deviation from procedure which leads to the deprivation of rights creating a void result that may not be enforced.[15] The parties were not the same, as evinced on the face of all pleadings allegedly reviewed by the Judge. A debt owed to different parties may not be held to deprive a claimant of an action against others that had no involvement or liability at the time.

C

CASE NUMBER 05-CV-2448

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[14] O.C.G.A. 9-12-16

[15] Johnson v. Mayor & City Council Of The City Of Carrollton, et al., 249 Ga. 173, 175 (1982), "Consistent with federal authority, we now hold that a judgment is void if the court which rendered it acted in a manner materially inconsistent with due process."

In this case Judge Howell, much to the surprise of Appellant, entered an Order on October 4, 2005 in which he was statutorily denied jurisdiction.

The law of the exercise of jurisdiction is explicit and has been held by this Court to be a self-enforcing first duty upon any judge. In the instant matter, Judge Howell is mandated to refrain from the exercise of jurisdiction if he is related within the prohibited degree by affinity to a party at interest in the case. Since two of the grand jurors being sued were related to Judge Carey Nelson within the sixth degree by consanguinity, there can be no issue of Judge Howell's relationship in that regard.[16]

Additionally, such a relationship is so close as to raise the reasonable presumption of a bias and prejudice in Judge Howell's mind that he had a non-discretionary self-enforcing duty not to proceed in any fashion because of this reasonable presumption. Yet he did anyway even after Appellant raise that issue in his Petition for Writ of Prohibition (R- 24) and raising the issue of JQC 220 in his brief. (R- 27)

It must not go unnoticed by this Court that Judge Howell stated in his Order of October 4th (R- 20) that "... Petitioner's Motion to Recuse is also legally insufficient under the requirements of Uniform Rule 25." A careful review of this record reveals that, at that time, there was no "Motion to Recuse" nor any pleading filed in that case which could remotely be labeled as such. The foregoing blatant disregard for procedural propriety and pleadings filed may only be seen as, and reasonably believed to be, an unwholesome bias and prejudice from which hands Appellant may have no reasonable expectation of due process or equal protection, let alone, justice.[17]

All of Judge Howell's conduct herein is a gross stain upon the integrity of this profession and demands the severest sanctions.

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[16] See O.C.G.A. 15-1-8(a)(2)

[17] See: JQC 220

D.

BOTH CASES

Appellant now calls the attention of this Honorable Court to one very important fact in the record. Appellant has made every good faith effort to prevent the necessity of appeal through the use of Declaratory Judgment, yet both judges have grossly abused their power by refusing to entertain a hearing wherein the rights claimed by Appellant could be properly adjudicated.

It must also be pointed out, as a technical point of law, that Appellant's rights accrued when these grand juries adjourned, nonetheless they were still in term, and as such, they were still able to comply with their oath. Therefore, Declaratory Judgment was still a valid option of right to Appellant.

The fact that they were still in term provides a technical exemption to the rule stated in Kelly v. City of Atlanta et al., 217 Ga. App. 365 (1995):

"Once deprivation of property has occurred ..., declaratory judgment no longer is available, as at that point the rights of the parties have already accrued. A petition for declaratory judgment will not lie " 'where all rights of the parties have already accrued and where no facts or circumstances are alleged showing a necessity for adjudication in order to relieve the plaintiff from the risk of taking future undirected action, which, without such action, would jeopardize the plaintiff's interest.'" Ridgeview Institute v. Brunson, 191 Ga. App. 608, 610 (382 SE2d 409); compare Sentry Ins. v. Majeed, 194 Ga. App. 276, 278 (2) (390 SE2d 269) (rights under policy had accrued), aff'd 260 Ga. 203 (391 SE2d 649)."

This left the Declaratory Judgment precedent enunciated in James B. Beam Distilling Co. v. State of Ga., 263 Ga. 609 at 613(5) intact; an available remedy to challenge the unconstitutional conduct of these jurors and remedy their error. Compliance with this law is mandatory upon the judges notwithstanding any other relief to which Appellant may, or may not, have been entitled.

III. CONCLUSION

Appellant calls the attention of this Court to the effective use of Judge Fudger's Order to disenfranchise Appellant by creating a condition precedent to obtaining justice against other future parties liable; and Judges Cummings' and Howell's appearing to attempt to turn a Court of this State into an unauthorized "unsolicited collection agency". Each of these judges, among their numerous errors, have had the voidness of Judge Fudger's Order called to their attention, or at least been put on notice of that fact and ignored it. However, without the petition of a party, pecuniarily interested, or with some other proper standing, in the collection of that void debt who has been unsuccessful in collection, they attempt to use a void Order as a tool, not for the purpose of "debt collection", but to prevent a citizen from the full enjoyment and exercise of his right to petition and be heard at a meaningful time and in a meaningful manner relative to the civilized settlement of disputes in the courts of this State. This they have done without providing proper due process hearings or trials of the underlying facts and have applied this void Order to cases wherein the parties are not the same as is required by law. Such conduct may only be viewed as an attempt to subvert the ends of justice, deprive a citizen of his right to choose his forum in which to exercise his rights, and the concealment of criminal acts, all of which require the strongest sanctions of this Honorable Court in the interest of Justice and Judicial Integrity.

Appellant respectfully points to the highest and best evidence in this matter, that being the record of the Court below viewed in the light of Constitutional guarantees, as supporting Appellant's claim that a void judgment existed in case number 01-CV-2777, and that reliance was founded thereon in these two other cases. This fact alone requires vacating these judgments and remanding with instructions as to the right of citizens to lay their evidence before an

impartial and detached forum of their choice which is clothed with the authority of the State to hear that complaint.[18]

Additionally, however, a default existed in case 05-CV-1674, and Judge Cummings grossly abused his discretion by not following the clear mandates of procedural law in O.C.G.A. 9-11-55. In so doing he was without the authority of the State to render the judgment he did in the manner in which he did, thereby creating an entire proceeding and Order void for lack of statutory jurisdiction and void for lack of substantive and procedural due process and equal protection.[19]

The record, in 01-CV-1674, is clear that a majority of grand jury members refused to hear Appellant's claim of criminal conduct. The majority refused to respond in any way to the subsequent suit (though a few did and were relieved of liability), and only then, when it was too late, did their heads come screaming out of the sand.

The record is absolutely devoid of compliance, by either the Appellees or Judge Cummings, with any of the requirements of O.C.G.A. 9-11-55, four of which are conditions precedent to the consideration of any Appellee pleading which might be filed, and three grounds that are also conditions precedent, not one of which was found or referenced by the Judge, nor was there even a Motion To Reopen Default. This statute was triggered by the majority of the Appellees ignoring their plain duty past the 30 day limitation while those who did not ignore were removed from liability.

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[18] United States v. Nixon, 418 U.S. 683, 709 (1974) "Only recently the Court restated the ancient proposition of law, albeit in the context of a grand jury inquiry rather than a trial, "'that `the public . . . has a right to every man's evidence,' ..." Aff'd in Cheney, Vice President of the United States, et al. v. United States District Court for the District of Columbia et al. 542 U.S. 367; 124 S. Ct. 2576;159 L. Ed. 2d 459 (2004)

[19] McBee v. Benjamin, 272 Ga. App. 567, 612 S.E.2d 802; 2005, "It is well settled that '[t]he sole function of an appellate court reviewing a trial court's [denial] of a motion to open default is to determine whether all the conditions set forth in OCGA § 9-11-55 have been met and, if so, whether the trial court abused its discretion based on the facts peculiar to each case.' Majestic Homes v. Sierra Dev. Corp."

These Appellees have been allowed to lithely slip into court where they and the judge, with no regard or compliance whatsoever with procedural due process let alone substantial compliance with legislative intent, accuse Appellant of procedural deficiency in an effort to subvert their liability for failure to comply with procedural due process, required by their oath, in refusing to hear Appellant in the first place, and the procedural law once their error was challenged. Appellant may have been procedurally deficient, but the abject ignoring of their peril after receiving minimal due process compliant notice, which stands undenied, and then filing a "special appearance" is their own undoing; it may not now be laid at Appellant's feet. As the Court of Appeals has held,

> "A special appearance for the purpose of contesting service is not an answer or "responsive" pleading. Hopkins v. Harris, 130 Ga. App. 489 (203 SE2d 762)."
>
> B-X Corporation v. Fulton Plumbing Company, 140 Ga. App. 131, 132

This is doubly true when the special appearance does not meet the legal conditions precedent test, which, taken together, raises the presumption of attempting to perpetrate a fraud upon the court; and as O.C.G.A. 9-11-5 mandates, "..., the failure of a party to file pleadings in an action shall be deemed to be a waiver by him or her of all notices, ...". It must not go unnoticed by this Court that the 30 day limit for answering a complaint is not merely a "statute of limitations", but, by operation of this language in O.C.G.A. 9-11-5, is a window of opportunity to claim substantive procedural rights which is closed at the end of that period, specifically, raising claims as to deficiency of service (See also, O.C.G.A. 9-11-12).[20]

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[20] McLanahan v. Keith, 239 Ga. 94, 95-96, "Failure to pay costs, lack of jurisdiction over the person, improper venue, and insufficiency of process are all defenses available to a defendant which do not reach the merits. However all of these defenses are waived if not timely raised. Code Ann. 81A-112 (h) (1)."

Such defensive pleadings as raised by Appellees do not meet statutory muster in a default proceeding,[21] and this is especially true where there is no hint of a claim of "no notice at all", and even then, that defense must be raised within the 30 day limitation or following a motion to reopen default and raising the issue as a meritorious (affirmative) defense..

These Appellees still have avenues open to them, i.e., motion to set aside and an ex delicto/damages hearing from which they might rise successfully. Additionally, they could petition the Court to convene a special grand jury session wherein they could be appointed to properly perform their duty which would serve as an affirmative defense to Appellant's complaint or cause Appellant to request dismissal altogether. This present course, however, is not the way the legislature intended, and is a shameful exercise in procedural due process, equal protection, and protectable rights violations, all of which create void Orders from void proceedings..

In case number 05-CV-2448, Judge Howell was statutorily divested of jurisdiction through a relationship to two grand jury members within the prohibited degree by affinity to Judge Nelson, and by edict of this Honorable Court as to bias and prejudice through this Honorable Court's enunciation of JQC 220, both of which he ignored. His Orders are absolutely void and his conduct inexcusable and reprehensible for a judge who, at one time, sat on the Highest Court of this State, even if by designation.

Additionally, his having sat on the Supreme Court should raise an awareness in the current Justices of the necessity to recuse or disqualify themselves if they sat with him or were associated with him on the Macon-Bibb County Board of Tax Assessors case, 1992, since the statutes make such consideration the first mandatory duty of all judges. See O.C.G.A. 15-1-8(a)(2) and JQC 220.

Appellant's right to perform his public duty to give to the citizens of his County his evidence, in a proper forum

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[21] Stout v. Signate Holding, Inc., 184 Ga. App. 154, 155, "By being in default, appellant waived his right to contest the trial court's jurisdiction over his person."

therefor, is being obstructed by these judges just as is his right to prosecute civilly those who refuse to fulfill their oath of office and their public duty to which Appellant has a right of proper performance.

This Supreme Court has a duty to stop this obnoxious form of obstruction.[22]

As to the question of grand jurors liability for their omissions rising to a level of deprivation of Constitutional rights one only need look to the U.S. Supreme Court in the cases of Morgan v. United States., 304 U.S. 1, 18 (1938) and U.S. v. Calandra, 414 U.S. 338 at 346.[23]

Appellant further believes that the issues presented are the object of so long and well settled law that recitation of further precedents would only waste the valuable time of this Honorable Court. However, should this Court, for any reason, require additional recitation of authority or briefing on an issue, then upon notice thereof, Appellant shall comply instanter.

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[22] Richard B. Cheney, Vice President of the United States, et al. v. United States District Court for the District of Columbia et al, 542 U.S. 367 (2004), "The Court also observed in Nixon that a 'primary constitutional duty of the Judicial Branch [is] to do justice in criminal prosecutions." Id., at 707. Withholding materials from a tribunal in an ongoing criminal case when the information is necessary to the court in carrying out its tasks "conflict[s] with the function of the courts under Art. III.' Ibid. Such an impairment of the 'essential functions of [another] branch,' ibid., is impermissible."

[23] Morgan v. U.S., 304 U.S. 1, 18 (1938) "The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one."

U.S. v. Calandra, 414 US 338 at 346, "It [grand jury] may consider incompetent evidence, but it may not itself violate a valid privilege, whether established by the Constitution, statutes, or the common law. Branzburg v. Hayes, supra; United States v. Bryan, supra; Blackmer v. United States, supra; 8 J. Wigmore, Evidence 2290-2391 (McNaughton rev. ed. 1961)". Braces added.

V. Prayer

As the record of this case reveals the deprivation of Appellant's rights and an unwillingness on the part of lower court judges to remedy the matter or allow Appellant remedial procedures, Appellant prays as follows:

Appellant request that his rights to petition, to present his evidence and be heard by any judicial, quasi-judicial body, or grand jury, be affirmed and that the Order of Judge Fudger, cited above, be held void, and that the Orders entered in case numbers 05-CV-1674 and 05-CV-2448 be held void; vacated and remanded with appropriate instructions to both judges and grand jurors relative to the prosecutorial standing of citizens or persons of lawful age and competency.[24]

Appellant further request that cost be awarded for the necessity of maintaining this action.

Respectfully submitted,
s/_____
Paul L. Nally
Appellant Pro Se

3667 Reinhardt College Pkwy.
Pine Log, Georgia 30171-1302

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[24] Darden v. Ravan, 232 Ga. 756, 758; 208 S.E.2d 846 (1974), "It is well settled that when a trial court enters a judgment where it does not have jurisdiction, such judgment is a mere nullity; but an appeal from such an illegal judgment will not be dismissed but instead, the void judgment will be reversed. See Walker v. Banks, 65 Ga. 20; Pope v. Jones, 79 Ga. 487 (4 SE 860), and cits."

FILED
SEP 29 2005
CLERK OF SUPERIOR COUR
BARTOW CO., GA

Petitioner's Appendix E

IN THE SUPERIOR COURT OF BARTOW COUNTY
STATE OF GEORGIA

PAUL L. NALLY,
Plaintiff

Civil Action 05-CV-1674

vs.

BARTOW COUNTY GRAND JURY, April 2005 Term, et al,
Defendants.

ORDER

Defendants have moved to dismiss this case, having specially appeared without waiving objections to the personal jurisdiction or venue. Defendants contend that lawful service of summons and process has not been perfected upon the defendants. Plaintiff has filed a written response to the action. No oral hearing is required on the motion. USCR 6.3.

Upon review of the motion, the response of the plaintiff and the court file on this case, this Court finds and concludes that lawful service of the summons and complaint has not been perfected. The only evidence of service is the plaintiffs certificate certifying service on the individual named defendants by first class mail. O.C.G.A. § 9-11-4(c)(d)(7) sets forth the proper method of perfecting service necessary to obtain personal jurisdiction. The required method was not accomplished. As cited by defendants, "[i]f service is never perfected and is not waived, the court does not acquire jurisdiction over the defendant and the suit is void, since the filing of a complaint without perfecting service does not constitute a pending suit." South v. Montoya, 244 Ga. App. 52 (2000). There is no evidence of waiver of service. Accordingly, this court has no jurisdiction over the defendants.

In review of the court file in this case and in a previous action filed by this plaintiff, Paul L. Nally v. The District Attorney. Cherokee Judicial Circuit et. aL Bartow Superior

Court Case No. 01-CV-2777, this Court sua sponte has determined this action should be dismissed.

The Order entered in Case Number 01-CV-2777 prohibited the plaintiff from filing future actions in Bartow Superior Court until this plaintiff paid the defendants' cost and attorney's fees in that case. That sanction was a condition precedent to the filing of future actions in Bartow County Superior Court. The trial judge in Case No. 01-CV-2777 ordered this plaintiff to pay the Attorney Sam Harbin the sum of $3,277.00 for his representation of the Defendant School Board. Plaintiff has failed to show that he has complied with that condition precedent and for that reason this action should be dismissed.

This Court also observes from comparing the present action to the action in 01-CV-2777 that plaintiff is still attempting to accomplish the same goal; to have a criminal action instituted without the consent of the District Attorney or, in this case, without an indictment from the grand jury. Plaintiffs alleged constitution right to prosecute criminal actions in his own behalf was decided adversely to the plaintiff in the order of Judge Arthur W. Fudger entered May 28, 2002.

Plaintiff's present action seeks to compel the Bartow County Grand Jury to hear his complaint about the alleged criminal matters. It is established that "[t]he grand jury as a body and its members individually, being an arm of the law and a part of the machinery of government are not subject to question in any court for its or their action in the performance of grand jury duties, and no rule of law of which we have knowledge is better settled than this." Cook v. Sikes. 210 Ga. 722, 727 (1954). See also Almond v. Brock, 227 Ga. 586, 588 (1971); Crawford v. Busbee, 164 Ga. App. 559, 561 (1982).

The mere failure to allow plaintiff to appear before the grand jury is not a breach of grand jury duties. This Court concludes that plaintiffs action shall also be dismissed on the foregoing authority.

IT IS HEREBY ORDERED AND ADJUDGED that plaintiffs action be dismissed and that he pay costs of court. This 26th day of September, 2005.

s/_____
F. Marion Cummings
Senior Judge
Superior Courts of Georgia

Polk County Courthouse
Room 203
Cedartown, Georgia 30125

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OCT 04 2005
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BARTOW CO., GA

Petitioner's Appendix F

IN THE SUPERIOR COURT OF BARTOW COUNTY
STATE OF GEORGIA

PAUL L. NALLY,
Petitioner

Civil Action 05-2448

vs.

MEMBERS OF AUGUST 2005 GRAND JURY IN THEIR INDIVIDUAL CAPACITIES: Foreman, Larry G. Holt, Members, Amanda L. Garland, Barbara G. Ford, Benjamin K. Hamrick, Beverly J. Baribault, Danny M. Stone, Dennis W. Knowles, Feliciana O. Kim, Gamy M. Heilman, Jeffrey D. Harris, Jimmy R. Wilson, Jr., Joseph W. Nelson, Judy R. Smith, Karl E. Baumheckel, Larry W. Crane, Linda A. Vernon, Michael S. Howren, Patrick J. Nelson, Robert P. Hill, Russell J. Tumlin, Thomas L. Carnes, Jr., Tomas Vazquez, Vyola H. Foster,
Respondents.

FINAL ORDER

The above styled case was filed September 12, 2005, and came to the Court's attention, and after reviewing the file the Court makes the following finding:

The Petitioner's pro se case is at least the third action filed in this Court in which he seeks the right to present a case directly to the Grand Jury. The first action, 01-2777, was decided adversely to him, and it was ordered that he pay $3,277.70 in attorney fees as a condition precedent to filing any other actions.

The Petitioner's second pro se action, 05-1624, was decided adversely to him by Order entered September 26, 2005. That Order also made a finding that Petitioner had no right to present a case individually to the Grand Jury. That Order again reiterated that Petitioner must pay the attorney fees due under the 01-2777 action prior to filing any further actions.

This present case was filed while the prior case was pending. The case, in essence, seeks the same redress for the same alleged grievances which have been litigated twice before. Official Code of Georgia Annotated §9-12-40 provides:

> "A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside."

The Doctrine of Res Judicata and Estoppel by Judgment are to prevent the continuous, repeated, frivolous and vexatious litigation between the same parties over the same issues such as is found in this case. A Judge has the inherent right to, sua sponte, dismiss an action in an appropriate case. Georgia Receivables. Inc. vs. Williams. 281 Ga. App. 313 (1995).

Petitioner presented an Order to Recuse the Judges of their Circuit. While the local Judges have recused themselves in the prior actions, judicial economy mandates that this action be terminated for the reasons set forth above, without the expense and trouble of obtaining another judge to hear issues which have already been resolved, or could have been resolved. The Petitioner's Motion to Recuse is also legally insufficient under the requirements of Uniform Rule 25.

THEREFORE, IT IS HEREBY THE ORDER OF THIS COURT that Petitioner's Motion to Recuse is denied, the action is dismissed, and the Petitioner is not allowed to file

any further actions until he complies with the sanctions previously ordered.

The Clerk of Court is directed to refuse any filings from the Petitioner regarding the same subject matter until he produces a receipt proving his payment of the ordered attorney fees in the amount of $3,277.70.

SO ORDERED this _4th_ day of October, 2005.

s/_____
SHEPHERD L. HOWELL,
JUDGE SUPERIOR COURTS –
CHEROKEE JUDICIAL CIRCUIT

Petitioner's Appendix G

FILED BY CLERKS OFFICE
U.S.D.C. Atlanta

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Apr 13 2003
LUTHER D. THOMAS
by: int.
Deputy Clerk

PAUL L. NALLY,
Plaintiff,

vs.

WILLIAM S. DUFFEY, JR.,
United States Attorney for
the Northern District of
Georgia,
Defendant.

CIVIL ACTION
NO. 1:02-CV-2829-JOF

ORDER

This matter is before the court on Defendant's motion to dismiss and Defendant's motion to dismiss Plaintiff's first amended complaint [8-1] .

Plaintiff, Paul L. Nally, appearing pro se, filed suit against Defendant, William S. Duffey, Jr., the United States Attorney for the Northern District of Georgia, seeking mandamus, a declaratory judgment, an assignment to a grand jury, and an assignment of counsel. In his complaint, Plaintiff contends that numerous local and state officials have committed criminal acts relating to the management of the Media Center at Pine Log Elementary School. Plaintiff further contends that these wrongdoings have been ignored by two local grand juries, several Bartow County judges, and the Supreme Court of Georgia.

Plaintiff appears to request that the court order Defendant either to empanel a grand jury or to allow Plaintiff to empanel a grand jury himself in order to investigate these alleged criminal activities.

Plaintiff contends that the Constitution of the State of Georgia gives him the right to prosecute any offenses against the state under Article I, Sec. I, Par. XII; see also In re Lester, 77 Ga. 143, 148 (1886). Plaintiff argues that this right is preserved under the Tenth Amendment to the United States Constitution. Defendant responds that Plaintiff has no standing to seek the criminal prosecution of the individuals he alleges mismanaged the Media Center at Pine Log Elementary School. Defendant further contends that he is immune from suit because a suit against him in his official capacity is the equivalent of a suit against the United States.

A mandamus action can be brought pursuant to 28 U.S.C. § 1361 to compel an employee of the United States to perform a duty owed, but the duty at issue must be mandatory and not discretionary. See Rush v. Macy's New York, Inc., 775 F.2d 1554, 1558 (11th Cir. 1985). Because investigations by the Attorney General or the United States Attorney are not mandatory, they cannot be compelled by mandamus. See Peek v. Mitchell, 419 F.2d 575, 577 (6th Cir. 1970) (noting that question of when and whether to initiate prosecution is within discretion of Attorney General and "same consideration applies equally as well to the United States Attorney") (citing United States v. Cox, 342 F.2d 167, 171(5th Cir. 1965); see also Otero v. United States Attorney General, 832 F.2d 141 (11th Cir. 1987) (per curiam) (where individual filed suit to compel investigation of former Florida State Attorney, court held that prosecutorial discretion cannot be controlled by writ of mandamus). Generally, a private citizen has no authority to initiate a federal criminal prosecution. See Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989). Only the United States as prosecutor can bring a complaint under 18 U.S.C. § 241-242, cited by Plaintiff. Id. See also Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) ("a private citizen lacks a judicial cognizable interest in the prosecution or nonprosecution of another"); Smith v. Snook, 237 F.3d 1322, 1324 (11th Cir. 2001) (finding that private citizen lacked standing to sue state bar officer, who acted in a "prosecutorial capacity," for failure to prosecute attorney for alleged ethical violations).

Plaintiff also argues that the Constitution of the State of Georgia gives him the right to prosecute any offenses against the state under Article I, Sec. I, Par. XII; see also In re Lester, 77 Ga. 143, 148 (1886) (suggesting in dicta that complainant has common law right to present evidence to grand jury). To the extent that such a common law right exists in the State of Georgia — and the court makes no comment as to whether it does' — Plaintiff has sued an official of the federal government. The court cannot issue a mandamus directing the United States Attorney to implement an investigatory mechanism found only in Georgia state common law.

For the foregoing reasons, the court GRANTS Defendant's motion to dismiss [5-1] and GRANTS Defendant's motion to dismiss Plaintiffs first amended complaint [8-1].

The Clerk of the Court is DIRECTED to DISMISS WITH PREJUDICE Plaintiffs complaint.

SO ORDERED this 16th day of April 2003

s/_____
J. OWEN FORRESTER
UNITED STATES DISTRICT
JUDGE

ENTERED ON DOCKET
APR 18 2003
By: int.
Deputy Clerk

'See Ambler v. State, 259 Ga. 406,407(1989) ("it is the state, not the victim, that has an interest in criminal prosecutions").

Petitioner's Appendix H

IN THE SUPERIOR COURT OF BARTOW COUNTY
STATE OF GEORGIA

FILED
MAY 29 2002
CLERK OF SUPERIOR COURT
BARTOW CO., GA

PAUL L. NALLY,
Petitioner, Pro Se

vs. Civil Action 01-CV-2777

DISTRICT ATTORNEY,
T. JOSEPH CAMPBELL,
et al,
Respondents.

ORDER

The Court heard the above captioned case May 20, 2002 on Defendant's Motion to Dismiss Plaintiff's Complaint for Declaratory Judgment and Defendant's Motion for an Award of Sanctions. After oral argument from Plaintiff, pro se, District Attorney Joseph Campbell, and Attorney Mike Dishman, and after reviewing the record, briefs and other documents filed in this action, the court rules as follows:

In his complaint, Plaintiff alleges a constitutional right to be a "citizen prosecutor" and prosecute criminal actions in his own behalf. However, a citizen has no such right. Criminal actions are the right of the state, not an individual, and are brought in the name of the state by the district attorney. "It shall be the duty of the district attorney to represent the state in all criminal cases of such district attorney's circuit " Ga. Const. 1983, Art. VI, Section VIII, paragraph I(a). The Legislature has also seen fit by statute to give the district attorney the right to advise grand juries as to matters of law, to draw up all indictments or presentments and to prosecute all indictable offenses, O.C.G.A. Section 15-18-6.

While District Attorney Campbell has advised several grand juries over the last three years that Plaintiff wishes to present an alleged criminal matter to them, none have seen fit to allow him to make such presentation. Several attorneys,

judges and other court personnel have advised Plaintiff that he does not have a criminal case and if he has a case, at all, it would be civil in nature.

Plaintiff has filed several prior actions in Bartow Superior Court, and all have ultimately been dismissed. On at least three occasions he has sought to recuse all of the Superior Court Judges of the Cherokee Judicial Circuit. He has also attempted to get the Administrative Judge to rescind his order appointing the undersigned to hear this action. While Plaintiffs legal endeavors may have begun in good faith, they have long since descended to frivolous, groundless vexations and abusive litigation. The Defendant Board of Education and all individual Defendants have moved the Court to impose sanctions on Plaintiff The Court believes sanctions would be appropriate under O.C.G.A. Section 9-15-14, providing for costs and attorney's fees to be assessed for frivolous actions, it is;

HERE BY ORDERED, that Plaintiff's complaint totally and completely fails to state any cause of action for which relief can be granted, and the same is hereby denied and dismissed as to all defendants. Defendants Board of Education and all individual Defendants' Motion for Sanctions is hereby granted. Said Defendants shall be granted all costs of litigation and attorney's fees for defending this action. Further, Plaintiff is hereby enjoined and restrained from filing any future actions in Bartow Superior Court until such time as he complies with the sanction to pay said Defendants' costs and attorney's fees. If the amount cannot be agreed upon either party may apply for a hearing as to the sanctions.

SO ORDERED, this 27 day of May 2002.

s/_____

Arthur W. Fudger, Senior Judge
Bartow Superior Court

Petitioner's Appendix I.

Pertinent Provisions Of
The Constitution of The United States

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

(Pet. Note: this provision is co-existent with the Ga. Const., Art I, sec. I, par(s).V and IX).

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(Pet. Note, this provision is co-existent with O.C.G.A. 1-2-6)

Amendment XIV

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(Pet. Note: this provision is co-existent with the Ga. Const., Art I, sec. I, par(s).I and II).

Petitioner's Appendix J.

Pertinent Provisions of
The Constitution of The State of Georgia

Ga. Const., February 5, 1777
Article LVIII

No person shall be allowed to plead in the courts of law in this State, except those who are authorized so to do by the house of assembly; and if any person so authorized shall be found guilty of malpractice before the house of assembly, they shall have power to suspend them. This is not intended to exclude any person from that inherent privilege of every freeman, the liberty to plead his own cause.

Ga. Const., 1877
Art I, sec. I, par. IV

No person shall be deprived of the right to prosecute or defend his own cause in any of the Courts of this State, in person, by attorney, or both.

Ga. Const., 1983
Article I, Section I, Paragraph I.

No person shall be deprived of life, liberty, or property except by due process of law.

Article I, Section I, Paragraph II.

Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

Article I, Section I, Paragraph V.

No law shall be passed to curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish sentiments on all subjects but shall be responsible for the abuse of that liberty.

Article I, Section I, Paragraph IX.

The people have the right to assemble peaceably for their common good and to apply by petition or remonstrance to those vested with the powers of government for redress of grievances.

Article I, Section I, Paragraph XII.

No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state.